interest, but to bar absolutely any prosecution in the United States Courts of a claim against a State originally held by an individual. Certainly whatever may have been the intention of its framers the letter of the Amendment does not call for this limitation on the grant to the Supreme Court of jurisdiction over controversies between States, and as it is in derogation of the rights of the individual as well as of an express grant of power its strict construction is demanded. Where then a State acquires the bonds of another State by donation or purchase and sues as the real party in interest there is no jurisdictional difficulty. But did the bonds in their inception create any legal right in the assignors? If not the assignee State should fail. The minority argue that where there is no legal remedy there can be no legal obligation and that therefore the promise of a State to an individual gives him no legal right but creates a bare moral obligation. The Court, however, looks at the bonds as if issued between private persons. Finding them on their face justiciable it holds that their unenforceability by their original holders is due to a mere difficulty of jurisdiction, and when this is removed by assignment to a State the legal right which has always existed can be enforced. In this the case illustrates the tendency of the Supreme Court to adopt at need MARSHALL'S view that a legal obligation may exist independent of legal remedies. *Ogden* v. *Saunders* (1827) 12 Wheat. 213. The conflict is a fundamental one along the lines of the perennial juristic controversy as to the nature of a legal obligation. A legal right once found in the assignor there seems no insuperable difficulty in giving to the assignee a remedy in a forum not available to the former.

The legal interest of the decision seems greater than its practical effect. Certainly it does not reendow repudiated State securities in general with exchange value. The relief made available is merely equitable and applies only to that class of bonds for which collateral security has been pledged by the State and is limited by the market value of that security. Further, recovery by South Dakota on a part of an issue of such bonds gave no incidental relief to the holders of the balance. It is of course open to such holders as the brokers in the principal case to continue to gratify their charitable instincts at the expense of the repudiating State by further donations. It is possible, too, that under the influence of the decision the debtor State may be willing to settle or that some litigous State may become a purchaser. But the position of holders of claims unsecured or secured by worthless collateral does not seem to be improved even in this indirect way. The Court has yet to decide whether a personal judgment on such a claim against a State will be granted. Even if rendered it would be valueless unless property of the State could be found which it would be proper to take in execution and this the Court recognizes is improbable.

LIMITATIONS ON THE RIGHT TO BE PROTECTED IN THE USE OF A TRADE-NAME.—In asking equity to protect him in the use of a trade-name a plaintiff may ask relief on the theory that he has a property right in such trade-name, or on the theory that the defendant is

employing unfair means of competition. And whether he will obtain relief may depend upon which theory the court adopts as applicable to the case. 2 COLUMBIA LAW REVIEW, 406. On either theory equity demands that the plaintiff shall not himself be guilty of a fraud on the public in the use of the trade-name; but acts which will preclude him from obtaining relief in one case may not necessarily have that effect in the other. A consideration of this question would seem to have been properly involved in a recent case in Illinois, though the court did not go into the matter. In that case the plaintiff sold one dollar hats under a trade-name "The Model." He also advertised in his show-windows and otherwise that he was the manufacturer of these hats when as a matter of fact he did not manufacture them. The defendant placed on the market one-dollar hats under a trade-name "The Medal." The court held that the plaintiff was entitled to be protected in the use of his label notwithstanding his false representation as to the brand of the hats. *Wormser* v. *Shane* (Ill. 1904) 27 Nat. Corp. Rep. 738. Had the court based its decision on the theory that the plaintiff had a property right in the use of the words "The Model" the result reached would seem to be correct, for, so far as the use of the words in question was concerned, the plaintiff had been guilty of no fraud. The public would have been deceived in the same degree if no trade-mark had been used and the use of one did not, therefore, in any way aid the deception. That is to say, the misrepresentation was not made by the very thing which the plaintiff is seeking to protect, and he should have relief. *Curtis* v. *Bryan* (N. Y. 1867) 36 How. Pr. 33. A different case arises when the misrepresentation of the plaintiff is made in the trade-mark itself, and in such cases the courts properly refuse relief on the ground that they will not protect a thing which is being used to defraud the public. *Krauss* v. *Peebles' Sons Co.* (1893) 58 Fed. 585.

If, on the other hand, the suit is brought for the purpose of restraining unfair competition, and that was the theory adopted by the court in the principal case, a different result should be reached. The inquiry then is, not whether the plaintiff has acted fraudulently with something he is trying to protect, but whether he has acted fraudulently in respect to the business in which he is engaged and with which the defendant is interfering. It must be remembered that the portion of the public to be considered in determining whether or not the plaintiff has been guilty of a fraudulent representation is not the portion which has used the goods before and buys them again because they are satisfactory, but it is the portion which is buying the goods for the first time and which, therefore, is buying them because it believes, from the plaintiff's representations, that they possess certain qualities. So far as the buyer is concerned it is immaterial how the misrepresentation is made and consequently the plaintiff may be guilty of fraud while at the same time employing a perfectly proper trade-name, and if so guilty equity will not protect him in his business though the Court may, in a proper case, protect his property rights in certain things which he employs in that business, if the use of them, considered by themselves, is proper. In all these cases the misrepresentation of the plaintiff must be material and the principal case may be justified on the ground that the court found that the misrepresenta-

tion was not material, but such a finding is hard to sustain for a false representation as to the manufacturer of the article sold would seem to be very material. *Manhattan Co.* v. *Wood* (1883) 108 U. S. 218. The representation in the principal case would lead the public to believe that the goods sold by the plaintiff were better than goods sold by other dealers at the same price, for in his case the middleman's profit would be saved.

JOINT-LIABILITY FOR TORT.—Joint-liability for tort involving, as it does, the liability of each tort-feasor for the entire damage done is ordinarily rested on intentional coöperation, and where this element is clearly present the courts have found no difficulties. *Williams* v. *Sheldon* (1833) 10 Wend. 654. It is apparent that the coöperation here required is in mental attitude; that is, the tort-feasors must act with joint volition and it is immaterial whether or not their acts merge in a single injurious effect. Alabama appears to make this the essential requirement of joint-liability, *R. & D. R. R. Co.* v. *Greenwood* (1892) 99 Ala. 501, and Wisconsin has also intimated, in a dictum, that this strict rule should be adhered to. *Lull* v. *F. & W. Imp. Co.* (1865) 19 Wisc. 112. Pennsylvania, though apparently taking the contrary view in *Downey* v. *Phil. Tract. Co. et al.* (1894) 161 Pa. St. 588, seems to be in accord in *Wiest* v. *Elect. Tract. Co.* (1901) 200 Pa. St. 148. An additional test, however, has been applied in most jurisdictions, which may be designated as coöperation in physical result. *Colegrove* v. *R. R. Cos.* (1859) 20 N. Y. 492; *Matthews* v. *R. R. Cos.* (1893) 56 N. J. L. 34; *Cuddy* v. *Horn et al.* (1881) 46 Mich. 596. By this test, though coöperation in mental attitude be absent, yet where there are single wrongful acts of different persons which together give rise to a single effect causing the injury, there is a joint-liability. This is well illustrated by the case of *Colegrove* v. *R. R. Cos.*, supra, where the plaintiff, a passenger on one of the defendant roads was injured in a collision due to separate acts of negligence of the two defendants. Here the two wrongful acts gave rise to the final effect, the collision, by which the plaintiff was injured, and the Court held the defendants to be properly joined. The two wrongful acts were indistinguishably merged in the resultant force which caused the damage and this merger was apparently what the Court relied on as the test of joint-liability. Between this class of cases and another class, represented by a recent Ohio case, the line of distinction is at first sight narrow. In that case the defendant city and several individuals rendered a stream unfit for the plaintiff's use by depositing refuse in it. In a suit for damages and an injunction it was held that the defendant was not a joint tort-feasor, and its liability only extended to the quantum of pollution caused by its own acts. *Standard Bag & Paper Co.* v. *Cleveland* (1903) 49 Ohio Law Bulletin 380. The distinction, a clear one in fact, is that in this case the wrongful act of each produces a separate result which may be roughly measured by the amount of refuse deposited by each, while in the Colegrove case the acts of each ceasing to operate separately become merged in a single resultant force which effects